

SECTION-BY-SECTION
Main Street Fairness Act
July 1, 2010

To promote simplification for the administration and collection of state sales and use taxes, and permit the implementation of the multi-state compact, the Streamlined Sales and Use Tax Agreement, ratified November 12, 2002 and became effective on October 3, 2005.

Section 1. Title

"Main Street Fairness Act"

Section 2. Consent of Congress

Congress consents to the Streamlined Sales and Use Tax Agreement (SSUTA).

Section 3. Findings

The Congress finds that the SSUTA simplifies State sales and use tax laws.

Section 4. Authorization to Require Collection of Sales and Use Taxes

Once ten States, comprising at least twenty percent of the total population of all states imposing a sales tax, have become Member States, the states that implement the SSUTA are authorized to require remote sellers to collect and remit sales and use taxes. A state's authorization will terminate if the state falls out of compliance with the Agreement, or the Agreement, as amended, no longer meets the minimum simplification requirements outlined in Section 6. This section also addresses the termination of authority and the determination of authority to require collection of sales and use taxes.

Section 5. Tribal Governments

The bill includes provisions that would allow Indian tribes to participate in the streamline sales tax system. The bill would require that the Governing Board consider an Indian tribe for admission if that tribe meets the same standards and requirements as a state and the petitioning tribe and its "primary" state have negotiated a separate agreement addressing the administration and collection of the tribal tax. Also under this provision, a Member State tribe shall have a seat on the Governing Board, but, if more than one tribe becomes a Member State, the Governing Board will consult member tribes and determine appropriate tribal representation.

Section 6. Determination by Governing Board and Judicial Review of that Determination

PETITION.- Any person who may be affected by the Agreement may petition the Governing Board for a determination on any issue relating to the implementation of the Agreement.

REVIEW IN COURT OF FEDERAL CLAIMS.- Any person who has submitted a petition under subsection (a) may bring an action against the Governing Board in the United States Court of Federal Claims for judicial review if the petition was denied by the Governing Board, or the Governing Board failed to act on the petition within six months, and the petition relates to one of four enumerated issues.

JURISDICTION.- The United States Court of Federal Claims shall have exclusive jurisdiction over actions for judicial review of determinations of the Governing Board of the SSUTA.

Section 7. Minimum Simplification Requirements

CRITERIA--- The Agreement must meet minimum simplification requirements including: (1) centralized, one-stop, multistate registration; (2) uniform definitions of products and product based exemptions; (3) uniform rules for sourcing; (4) uniform procedures for certification of tax administration software; (5) uniform rules for bad debts; (6) uniform requirements for tax returns and remittances; (7) consistent electronic filing and remittance methods; (8) single, State-level administration of sales taxes; (9) Single sales and use tax rate per taxing jurisdiction on food, food ingredients, and drugs (10) simplified sales and use tax rates, including elimination of caps and thresholds on rates; (11) a statewide taxability matrix; (12) liability relief for sellers using state-provided information; (13) uniform audit procedures including an option for a single audit; (14) reasonable seller compensation for all sellers; (15) protections for consumer privacy; (16) governance procedures to ensure adherence to the Agreement; (17) uniform rule to establish a small seller exception; (18) uniform rules for “sales tax holidays”; and (19) uniform rules and procedures to address refunds and credits. This section also includes the application of minimum simplification requirements to taxes on communications services, the requirement to provide simplified tax systems, and no requirement to exempt from or impose tax.

Section 8. Limitation

IN GENERAL.- Nothing in this Act shall be construed as subjecting sellers to franchise taxes, income taxes, or licensing requirements of a State or political subdivision thereof.

NO EFFECT ON NEXUS, ETC.- No obligation imposed by the authority granted by section 4 of this Act shall be considered in determining whether a seller has a nexus with any State for any other tax purpose.

Section 9. Expedited Judicial Review

THREE-JUDGE DISTRICT COURT HEARING - Any civil action challenging the Act's constitutionality shall be heard by a district court of 3 judges.

APPELLATE REVIEW - The judgment of the District court shall be reviewable by the Supreme Court.

Section 10. Definitions

Provides definitions of Governing Board, Member State, Nondiscretionary Duty of the Governing Board, Person, Remote Sale, Remote Seller, State, and SSUTA.

Section 11. Sense of Congress on Digital Goods and Services

Sense of the Congress that each Member state that is a party to the SSUTA should work with other SSUTA Member states to prevent double taxation in situations where a foreign country has imposed a transaction tax on a digital good or service.